

30. **ISSUE: HENDERSHOTT SUBVERTED MCSO RESPONSE TO A BOARD OF  
SUPERVISORS SUBPOENA FOR MCSO RECORDS – SUBJECT:  
HENDERSHOTT**  
(Munnell Memo p. 51)

**Chief Deputy David Hendershott**

H25A. Allegedly, Chief Deputy David Hendershott inappropriately decided not to cooperate with the March 2010 subpoena issued by the County Board of Supervisors to MCSO for the reproduction of various financial records. Hendershott directed staff not to turn over the documents by the due date even though they had already spent a large amount of time and money to successfully reproduce the documents by the deadline.

**MUNNELL'S WRITTEN ACCOUNT**

**County Records Request**

The County Manager and Deputy County Manager requested documents relating to the assignment of personnel within the Sheriff's Office as well as financial records on all accounts as far back as 2005. This request was made in November 2009 via memo. Chief Barkell was instructed by the Hendershott to ignore the requests and not respond to the memo. The County continued making the request without receiving any response until March 2010. In March 2010, the County Board of Supervisors served a subpoena on the Sheriff to produce the documents.

Upon receipt of the subpoena, Barkell immediately had finance staff begin the pulling and copying of all procurement, accounts payable and receivable accounts. This required the leasing of two additional copy machines and overtime by staff. The response to the subpoena was due within 7 days. All copies were made, redacted and ready to be delivered the Thursday afternoon before the Friday due date. During production of documents, you and Hendershott met with attorneys who advised turning over the documents.

Barkell advised you to turn over the documents as they were all public record and had been provided in small amounts to media requests. Ignoring everyone's advise, Hendershott decided late Thursday afternoon not to release the documents and instructed Barkell and other staff not to release or discuss the issue with anyone. The attorneys for you wrote a letter stating that the request was onerous and could not be completed in the time provided by county.

The County responded by subpoenaing the you and his Chief Financial Officer, Loretta Barkell as being in contempt of the original subpoena and ordered both of you to appear at a hearing on May 10. If you did not appear, you would be arrested for contempt. Upon receipt of the second subpoena, Loretta Barkell was provided a letter from Ogletree regarding joint representation of you, Chief Deputy and Barkell. Barkell could be represented by this law firm so long as her views on the entire matter were in full agreement with you and Hendershott otherwise she would need to seek counsel elsewhere.

Ms. Barkell decided to obtain independent counsel and the County agreed to provide counsel requested. Ogletree prepared Court actions and hearings were heard by a judge in Pima County. The judge first determined that the contempt hearing could not proceed as the County did not have procedures in place to conduct such a hearing. The release of records was delayed while the judge reviewed legal submissions from both sides.

1  
2 However, the County still proceeded with a hearing to discuss not only the Sheriff's Office non-  
3 compliance with the subpoenas but to review the Sheriff's budget and impose sanctions against  
4 the Sheriff's Office budget accounts. The judge finally ruled in July 2010 that the Sheriff's Office  
5 argument against the Board was not substantiated and ordered the release of the records  
6

7 Sheriff, again, this is a case where sound legal advice was not followed and as a result, the  
8 Sheriff's Office wasted additional unnecessary legal fees and gave the public the impression that  
9 we had something to hide. I was recently informed that you were very surprised to learn that  
10 David Hendershott had actually made the decision not to release these records, not legal counsel.  
11 In fact, Attorney Eric Dowell told Lisa Allen that he advised this office to release the records, as  
12 there was no legal basis not too. However, according to Allen, Hendershott pointedly told Dowell  
13 that he is his (Hendershott's) attorney and will do what Hendershott tells him.  
14

15 What is the true reason your Chief Deputy resists releasing our financial records? Is it to conceal  
16 potentially embarrassing expenditures similar to the credit card charges of over five thousand  
17 dollars (\$5,000.00) to provide a paid vacation for officials of the Honduran government? It is  
18 reckless decisions like these that have cost this office and the public hundreds of thousands of  
19 dollars in unnecessary legal expenses and continually give the media and public the idea that we  
20 have something to hide.  
21

22 David Hendershott's propensity to disregard sound legal advice provided by attorneys  
23 representing this office has been to the detriment of this organization. Hendershott recently sent a  
24 letter to the law firm of Jones-Skelton dismissing them from representing this office any further.  
25 Although it has been reported that Hendershott told you that the firm would still be representing  
26 this office, it appears that he lied to you because Jones personally stated to Jack MacIntyre that the  
27 letter sent to him by Hendershott stated that MCSO would never use them again for any matter.  
28 This reckless decision is considered very detrimental to this organization because the firm had  
29 been very successful in representing our interests in a variety of cases. It is unknown as to why  
30 Hendershott unilaterally ended the contract. But I do know that Deputy Chief Jack MacIntyre  
31 spoke to you about the matter and that Hendershott chewed him out for bringing the matter to your  
32 attention.  
33

34 As you will read, David Hendershott has in fact engaged in a history of misconduct that is clearly  
35 unacceptable in a professional law enforcement organization.  
36

### 37 WITNESSES LISTED BY MUNNELL

38  
39 Communications Lisa Allen Told Munnell about DH-Eric Dowell discussions.  
40 Executive Chief Loretta Barkell Provided written summary of matter to Munnell.  
41

### 42 DOCUMENTARY EVIDENCE

#### 43 Exhibit A22. 5/17/10 – Munnell email to himself re: Release of Records

44 The text of the email by Frank Munnell is as follows.  
45

46  
47 Lisa last Friday met with the Sheriff about subpoena releasing records. Eric Dowell told  
48 her personally that we were going to lose if we don't release those records. According  
49 to Lisa, Dowell was told by Dave that he is his attorney and will do what he is told  
50 because he works for him. She also said she again complained to the Sheriff a few days  
51

ago but wouldn't specifically tell me what she said about Dave. Sheriff accused her of disloyalty and said he would never ever fire him. She told him he was sacrificing the entire Sheriff's Office for Dave's actions and he still supports Dave.

## WITNESS ACCOUNTS

### Frank Munnell

According to Munnell, his source for information on this issue is Loretta Barkell. Munnell's understanding as to what transpired is found on pp. 88-89 of Exhibit II 28b.

### Loretta Barkell

Barkell indicated that the first request from the Board of Supervisors came in March of 2010, in the form of a memo, from Sandy Wilson to Chief Hendershott and Loretta Barkell. When Barkell spoke to Hendershott, he instructed her not to respond to the memo, but to ignore it. Sandy Wilson followed up with another memo in April, and once again she was told by Hendershott not to respond. Subsequently, MCSO received a subpoena from the County, in approximately the beginning of May, and Loretta made arrangements with Finance at MCSO, as well as personnel in Procurement, to have extra copy machines brought in. Her personnel copied records from 5:00 a.m. to 8:00 p.m. for a week to meet the deadline on the subpoena.

She did not have any discussions with Hendershott before responding to the subpoena. They did not discuss the matter until the Wednesday before the documents were due, at which point she told him that the documents had been reproduced and that they were going to be redacted. Hendershott then said that attorneys for MCSO were going to take the position that the request was broad and burdensome, and Loretta indicated that copies had been made, and that they were in fact public records. She told Hendershott that the same records would be released to the media or to anyone else. It is her opinion that it would be the best idea to give the County what it had requested. She had also spoken to Sheriff Arpaio about this, and thought that she had the Sheriff convinced that the records needed to be turned over.

That Thursday afternoon, she was told by Hendershott that they were not going to be turning over the records, and that the attorneys from Ogletree Deakins were going to be reviewing the records, which were contained in some seventy boxes, that were shipped to the law firm. She understood that Ogletree Deakins was going to redact the records further, even though MCSO personnel had essentially redacted the names of the personnel and any relationship to the name of a case had been redacted as well. She received this information from Chief Hendershott.

The deadline was missed, and then there were additional records received holding Loretta in contempt and the Sheriff in contempt for not producing the documents. It was at that time that Loretta started to become very nervous, and she felt that she needed to

1 have her own attorney. She received a letter from Ogletree Deakins, that if she wanted  
2 the firm to represent her on the subpoena, she basically had to agree with whatever the  
3 Sheriff or the Chief Deputy said had been the circumstances surrounding the non-  
4 production of the documents. She did not agree with their position, and so at her  
5 request she was provided with separate counsel. Ultimately, the Sheriff's Office did  
6 release the documents to Maricopa County toward the end of July. She believes that all  
7 70 boxes were released, but she could not say whether there had been any further  
8 redactions than those that had been made by MCSO staff.

9  
10 **Don Schneidmiller**

11  
12 Schneidmiller advises that he had first-hand knowledge about this.

13  
14 A: I was present in the room, in his office, when he told me that we're not  
15 going to be giving anything to the Board, that our attorneys are handling that, but  
16 I am not to give anything to the Board and any requests I get from any attorneys  
17 are to be forwarded to Dave so that legal counsel could tell us what our official  
18 response would be. I know that we had documents copied ready to go, there was  
19 a great deal of urgency in fact, placed on my staff and others, to have those  
20 documents copied and ready to go. It was quite shocking to all of us that what  
21 was once urgent to have done, suddenly became not so urgent, we're not giving it  
22 to them. (p. 58, Exhibit II34a)

23  
24 Later, Schneidmiller spoke with attorneys from Ogletree Deakins, who were  
25 representing the county on the matter, and they were surprised at Hendershott's  
26 decision not to release the documents. According to Schneidmiller, they made it sound  
27 like it was Hendershott's decision and Hendershott made it sound like it was legal  
28 counsel's decision.

29  
30 **David Hendershott**

31  
32 Hendershott indicated that a very broad subpoena had been served upon MCSO "for  
33 just about every record you can imagine from financial records to credit card records."  
34 (p. 48, Exhibit II16e) Hendershott acknowledged that the need for documents by the  
35 County Manager and the Deputy County Manager started out as a public records  
36 request, and that Hendershott had instructed Chief Barkell to ignore the request and not  
37 respond to the memo. When asked why, Hendershott explained that MCSO lawyers  
38 wanted to have all the documents taken over to their office to review them and then  
39 have the County persons come over and review them and determine if they wanted  
40 copies of specific documents, of which legal counsel for MCSO could keep track. Eric  
41 Dowell was handling the issue of the release of the documents. According to  
42 Hendershott, MCSO lawyers had "reached out" to the County, and it was the MCSO  
43 lawyers who were attempting to narrow the records request, because the request was  
44 so broad.  
45

1 According to Hendershott, Loretta Barkell thought that there was nothing irregular about  
2 the documents, and they could be handed over. Hendershott perceived, however, that  
3 the Board of Supervisors was trying to retaliate against MCSO, and he felt that it was  
4 very necessary to control the release of the documentation, because he felt there were  
5 "bad intentions" from the Board of Supervisors and senior County management. (p. 49,  
6 Exhibit II16e)

7  
8 Hendershott did acknowledge that, after MCSO was subpoenaed, the documentation  
9 had been amassed, which was responsive to the subpoena, seven days in advance,  
10 and redactions had been made. Further, the documentation had been ready for  
11 production by the due date. While acknowledging all of this, Hendershott also indicated  
12 that MCSO's lawyers had not seen the records yet, and while redaction had been done  
13 by the civilian staff, based on their knowledge and abilities, a lawyer would take an  
14 entirely different look at the litigation that was underway at the time. According to the  
15 Munnell Memo, Barkell had advised Hendershott to turn over the documents because  
16 they were all public records, but Hendershott's response was, "she never told me to turn  
17 over anything. She just did what I told her to do." (p. 49, Exhibit II16e)

18  
19 According to Hendershott, Barkell was concerned because the Board of Supervisors  
20 was attempting to blame her for not producing the records. Hendershott indicated he  
21 tried to explain to Loretta that the lawyers wanted to see the documentation, and why it  
22 was important that MCSO monitor "what was going on." The decisions that were made,  
23 with respect to release of the documentation were, in Hendershott's words, "decided  
24 with myself, the Sheriff and counsel." As he put it, "I don't necessarily have to share  
25 with the entire staff when we make legal decisions based on the good of the office and  
26 the good of our employees." (p. 50, Exhibit II16e)

27  
28 After MCSO did not comply with the subpoena by the deadline, Loretta Barkell (not  
29 Chief Hendershott) was subpoenaed, and according to Hendershott, this "scared her to  
30 death." It was at that time that Barkell got her own lawyer. It was, Hendershott said,  
31 around this time that she went on FMLA "a couple of times."

32  
33 Hendershott went on to say that Loretta's division Commanders, Susan Ashmore, Dan  
34 Campion, Taanya Creek and Lynn Adams, what Hendershott called "the four  
35 horsemen," who knew the budget in and out, suggested that Loretta was not well, and  
36 according to Hendershott, Lynn Adams had suggested that they had not received any  
37 management or gotten instruction for months prior to the time that Barkell went out on  
38 leave. They also indicated, according to Hendershott, that Loretta had made various  
39 decisions without having any basis for what she was doing. (pp. 51-52, Exhibit II16e)  
40 This information came to Hendershott after Loretta was out on leave, and had been  
41 temporarily replaced by Don Schneidmiller.

42  
43 The division Commanders came to Hendershott after an article had been done about  
44 the budget, and there had been accusations made by Barkell that Hendershott had  
45 forced her to do things contrary to policy. (p. 52, Exhibit II16e) Hendershott claimed that

1 he felt that this was the first time he was "actually finding out what was going on in the  
2 area," referring to Barkell's sphere of responsibility.

3  
4 After Loretta had returned to work from leave, Hendershott said he set up a relationship  
5 with Eric Dowell's firm, and he told her that everything that she did in "moving the  
6 budget" was to be copied to Eric Dowell. Hendershott said that he had worked out  
7 something with Eric Dowell because he was to monitor the situation, insofar as for his  
8 firm was involved in three or four lawsuits, Hendershott says, that directly involved the  
9 purchase of a bus. Hendershott said that he was "trying to give her a sense of comfort"  
10 and he "welcomed her to copy the lawyer."

11  
12 As Hendershott put it, "Frankly, it would make my job easier because then Eric [Dowell]  
13 could come to me and say he's got some issues." Hendershott indicated that Loretta  
14 ended up having a tempestuous relationship with her lawyer.

15  
16 Hendershott felt that Barkell, and later Karen Andrews, Barkell's administrative  
17 supervisor, were trying to set up MCSO for a potential lawsuit.

18  
19 Hendershott advises that MCSO never documented any performance issues with  
20 Barkell. According to Hendershott, he at one point asked MaryEllen Sheppard to  
21 investigate the issues relating to Barkell getting along with employees and "writing these  
22 memos," and her issues with stress. However, counsel for MCSO suggested that such  
23 an inquiry "wasn't a good idea" because she was home sick.

24  
25 The discussion was steered back to the issues relating to the release of documentation,  
26 in response to the subpoena. According to the Munnell Memo, attorney Eric Dowell had  
27 told Lisa Allen that he had advised MCSO to release the documents because there was  
28 no legal basis not to do so. The memo goes on to assert that Hendershott told Eric  
29 Dowell that Dowell was Hendershott's attorney, and will do what Hendershott told him to  
30 do.

31  
32 Hendershott acknowledged that he was not present when there were communications  
33 between Eric Dowell and Lisa Allen. He did discover that Eric Dowell made the ultimate  
34 decision to release the paperwork because, Hendershott says, Loretta had made two  
35 copies of the documents. Eric Dowell contacted Hendershott, and said that because  
36 two copies of the documents had been made, one of the copies could be released and  
37 the other copy given to the lawyers. Hendershott claimed that he did not understand  
38 the logic of why the documents should be released just because more than one copy  
39 had been made. Further, he asserted that these events occurred without him knowing  
40 about it. Sheriff Arpaio asked Hendershott about it at one point, and Hendershott didn't  
41 know, because he had talked to Eric Dowell earlier, and Dowell indicated that the  
42 records were not going to be released. Hendershott claimed that two or three days  
43 later, he talked to Dowell who indicated that things had changed because he found out  
44 that MCSO had another copy of the documents.

1 The Munnell Memo also suggested that Hendershott was resistant to having the records  
2 released because some of the information in the financial records would be  
3 embarrassing, for example, credit card charges of over \$5,000 to provide a vacation for  
4 officials of the Honduran government. Hendershott explained that the charges that  
5 were expended were for the Minister of Security and his security staff, which included  
6 three or four persons. MCSO wanted to host the Honduran officials because Honduras  
7 had hosted MCSO personnel, including Hendershott. They wanted to meet with the  
8 Sheriff, which they did, take tours, and meet with the governor. Hendershott believed  
9 that RICO money was used. They also went out to dinner with Mary Rose Wilcox. It  
10 was an opportunity for the Honduran officials, including the minister of security and his  
11 staff, to meet with senior County officials. He believes that they were also hosted at a  
12 Diamondbacks game, and met the owners of the Diamondbacks. According to  
13 Hendershott, IA Captain Jimmy Miller did most of the hosting. They bought some of  
14 their meals, but there were some planned events for which MCSO paid. Hendershott  
15 does not deny that the charges were \$5,000, if not more.

16  
17 **Terry Young**

18  
19 Young indicated that the Legal Liaison Office, with assistance from Loretta Barkell's  
20 group, had amassed all the records in some 70 boxes, and at one point Hendershott  
21 said the records were not going to be released. Subsequently, the records were turned  
22 over to Ogletree Deakins, to begin a redaction process. Terry did comment that as of  
23 the time of the interview, *Arizona Republic* had requested the records, so the Legal  
24 Compliance Unit was in the process of redacting the records.  
25